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Criminal Law Act is useful — but handle with care

BY

[EUGENE K B TAN](#)

December 3, 2015

In a significant decision last week, Singapore's highest court ruled that alleged global football match-fixer Dan Tan Seet Eng's preventive detention was unlawful. His detention went beyond the scope of discretionary power vested in the Minister for Home Affairs under the Criminal Law (Temporary Provisions) Act (CLTPA). The court's ruling drew criticisms from a former Interpol chief and, ironically, FIFA, football's graft-ridden governing body.

Based on the grounds for the detention put up by the Minister, the Court of Appeal determined that Tan's activities were not of a sufficiently serious criminal nature to threaten or undermine "public safety, peace or good order in Singapore", the *raison d'être* of the CLTPA.

The court noted that Tan's alleged match-fixing syndicate activities took place outside Singapore. Furthermore, Tan's criminal acts had ceased almost two-and-a-half years before he was served with a detention order. Neither was there any suggestion that witnesses were intimidated and unwilling to testify against Tan.

It is important not to misinterpret the court's decision. In reviewing the grounds of detention, the court took issue with the way Tan's detention order was drafted and how it did not meet the strict requirements justifying the use of the CLTPA. Home Affairs and Law Minister K Shanmugam noted that the court's objection was "not a question of policy or principle". On Tuesday, Tan was arrested again and Mr Shanmugam yesterday said that, should a new detention order be issued under CLTPA, the grounds for detention will be "set out in full" to comply with its requirement.

With these turn of events in the past week, it is timely to look at how the CLTPA has been used, and its place in Singapore's criminal justice system. This year marks 60 years since the colonial authorities first introduced the CLTPA in 1955 to impose law and order during a tumultuous period in Singapore's history.

Designed as a temporary law, the executive has to go before Parliament every five years to renew the CLTPA.

In recent years, given the ruling People's Action Party's dominance in Parliament, the CLTPA has encountered a relatively easy passage through the legislative process. With the relatively safe environment here, some Singaporeans — especially those born post-independence — may find it hard to comprehend why such a tough law is needed.

To be sure, there is merit in having a law that ultimately seeks to keep Singapore safe from hardcore criminal elements. The CLTPA has been renewed 13 times, the last being in November 2013. The brevity of the 2013 amendment Bill, comprising only two clauses totalling no more than 50 words, belies the fundamental importance of the CLTPA.

Long and much feared by criminals, the CLTPA provides for the power to detain individuals without trial for renewable one-year periods. This has been an important legal tool in the fight against violent criminal activity such as secret societies, drug trafficking and loan-sharking.

Its regular renewal speaks of the Government's determination to have the full range of legal powers to keep hardcore criminal activity at bay. At the same time, the CLTPA's powers raise legitimate concerns about whether the law is necessary today and whether there can be even stronger safeguards against its misuse. Tan was detained for more than two years before his detention was ruled unlawful.

Over the years, the use of CLTPA has expanded. For example, the CLTPA was used against SMRT bus drivers who staged a strike in November 2012. In recent years, it was used against Tan and several persons alleged to be involved in a major international football match-fixing syndicate operating from Singapore.

MAINTAINING PUBLIC CONFIDENCE IN CLTPA

It is unlikely that the dangers that the CLTPA seeks to address will be eliminated in the next five to 10 years. And with evolving threats, and the Government's longstanding preference for a plethora of calibrated law and order measures, the CLTPA will be anything but temporary.

Humans are not angels. No society can realistically hope to eliminate all crime. Societies can seek only to regulate the crime situation to ensure that it stays within acceptable limits. It is for each society to decide what those limits are.

However, the CLTPA cannot be allowed to become a legal crutch. For a long time, the Government had argued that the mandatory death penalty for murder and drug trafficking helped to keep Singapore safe. But Parliament passed the necessary legislative amendments in 2012 to make the incremental but important shift towards a discretionary death penalty regime in specified circumstances. This shift was made notwithstanding the Government's assessment of a worsening regional drug situation and the large number of repeat drug abusers likely to be released in the next few years.

So each time the CLTPA comes up for renewal, it should prick at our collective conscience. After all, the law does not bring alleged perpetrators of serious crime to justice.

It is a cardinal rule of legal principle that no person should be imprisoned without an open trial. Robust explanation and justification are needed each time the government seeks to use or extend the lifespan of the CLTPA.

While a low crime rate is of utmost importance, how we go about attaining that imperative matters immensely. Our approach to crime control cannot be a manifestly utilitarian one of the ends justifying the means.

The Court of Appeal's decision is to be welcomed for the court's exposition of the limits of the executive's powers under the CLTPA and its careful examination of whether the power to detain Tan was properly exercised.

While unlawful, the court did not find that the decision to detain Tan was made capriciously or arbitrarily. Public confidence appears not to have been undermined. Mr Shanmugam said on Sunday that "a majority of Singaporeans support (the CLTPA)".

The CLTPA must be handled with utmost care — both in its use by the executive and in the judiciary's review of its use. Going forward, the executive has to continue making a water-tight case in justifying its existence.

ABOUT THE AUTHOR:

Eugene K B Tan is associate professor of law at the School of Law, Singapore Management University. He participated in the 2013 parliamentary debate to extend the CLTPA for another five years as a Nominated Member of Parliament then.